

## Testimony of the National Water Resources Association on H.R. 3561, a bill to establish the Twenty-First Century Water Policy Commission

Mr. Chairman, members of the Committee, my name is Thomas F. Donnelly and I am the Executive Vice President of the National Water Resources Association. On behalf of the membership of the Association, it is my privilege to present testimony on H.R. 3561, a bill to establish the Twenty-First Century Water Policy Commission.

The National Water Resources Association (NWRA) is a nonprofit federation of associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource, WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

My first reaction, and I suspect a majority of the members of the NWRA, upon learning of the introduction of H.R. 3561, was; please, not another water policy commission. We have been down this road before with mixed results.

Since 1900, over 20 national commissions or similar groups have been authorized by Congress or the President to study water resources. A few of the more recent studies worth mentioning are:

### National Water Policy Commission -1950

In the late 1940's, the Engineers Joint Council, made up of members of the American Society of Civil Engineers, the American Society of Mining and Metallurgical Engineering, the American Society of Mechanical Engineers, the American Institute of Electrical Engineers and the American Institute of Chemical Engineers, took steps to institute the creation of a National Water Policy Commission charged with the investigation and reporting upon the several elements affecting the orderly and economical development of the water resources of the country. The Council expressed their ideas to the Administration and on January 3, 1950, President Truman established the President's Temporary Water Resources Policy Commission by executive order. In July 1951, the Commission presented its report to the President. The Commission was made up of seven members; however, over eighty (80) water professionals participated on nine policy panels on: domestic and industrial water supply and pollution; flood control; navigation and inland water transportation; irrigation; hydroelectric power; recreation, fish and wildlife; water resources information; land drainage; and policies and general applicability. The Commission found four significant general principles should govern any discussion of national water policy. These principles are: "(1) **Local, State and private responsibility should be preeminent** and be consciously and effectively nurtured and extended in water project programming, execution and financing; (2) **Bookkeeping should be clear and forthright and should be based upon full inclusion of all costs and reimbursements**; (3) **Costs should be collected from those benefited either directly or in a subsidiary way**. General intangible benefits should preferably be regarded as a margin of advantage in project selection; and (4) Legislative authorizations and policies should be uniform for all Federal agencies responsible for water resources development."

The Commission also found, "**Consideration and control of the waters of the United States are in the**

**national interest, but not necessarily a function of the Federal Government.** On the contrary, that which can be done by the individuals should be done by him, and that which requires collective action should be done at the lowest governmental level practicable.” The Commission was a little more circumspect in their criticism. They essentially **blamed politics and Congress for the “haphazard development” of our nation’s water resources.**

The Commission’s report, “Principles of a Sound National Water Policy” is a difficult read, but does contain some pearls of wisdom, which are valid today.

### **The Second Hoover Commission (Task Force on Water Resources and Power) - 1953**

The Second Hoover Commission was authorized by Congress and signed into law on July 10, 1953. The Second Commission was authorized to enter the field of policy – that is, to determine not only whether an existing function is being performed efficiently, but also whether government should perform it at all. One of the subdivisions of the Commission was the Task Force on Water Resources and Power. The Task Force summarized its ten principal findings as follows:

- (1) Imperative need exists for a clear definition of the role and policies of the Federal Government in the framework of a consistent national water policy, which will progressively promote conservation, and development of this vital natural resource for the Nation as a whole, as well as for States and local communities.
- (2) The Federal Government has assumed an ever-increasing share of responsibility for water resource and power development until it has become a dominant factor in enterprises, which should be outside its domain, as that domain is defined by the Constitution.
- (3) The Federal Government has not given sufficient consideration to non-Federal interest, opinion, and participation in planning water resources and power projects.
- (4) The Federal Government has used water resources and power development projects, which should be undertaken exclusively for economic purposes, to accomplish indirect social and political ends.
- (5) The Federal Government has paid too much of the costs of water resource and power development and has required too little of the beneficiaries.
- (6) The Federal Government has planned, constructed, and paid for water resources and power development projects, which are economically unsound and hence waste the national wealth.
- (7) From the standpoint of financial return to the Federal Government, Federal water resource and power projects which produce, or could produce, revenues are not operated according to sound business principles, and do not produce a return fairly related to their value; nor does the Federal Government uniformly require adequate contributions, either for the use of its money for capital outlay or for operation and maintenance costs.
- (8) The Federal Government’s organization for carrying out its policies on water resources and power development lacks coordination, fosters competition among its agencies, causes controversy, confusion, duplication, and waste, and encourages, rather than curbs, bureaucratic ambitions.
- (9) The executive branch of the Federal Government has no effective means or procedures for accomplishing an independent and objective review of water resource and power projects proposed by its agencies.
- (10) The Federal Government has not provided adequately for the collection and analysis of basic data, which should determine the physical feasibility of water resource and power projects, and has undertaken projects based on inadequate data.

The Task Force concluded that the **first objective of any “National Policy” should be a consistent**

**Federal policy for water resources development that lessens the centralization of authority in the Federal Government and strengthens local authority and participation. The second objective should be the consistent application of sound principles and criteria to determining which projects would increase the national wealth and whether or not State and local interests are willing to shoulder financial and administrative responsibility commensurate with the benefits they receive.**

Characteristics of both the National Water Commission of 1950, the Second Hoover Commission's Task Force on Water Resources and Power and the National Water Commission (outlined below) included: (1) membership composed of nationally recognized water resources professionals, and (2) conclusions calling for greater local authority and financial participation, less Federal involvement, and projects and programs which are based on sound cost-benefit analysis.

### **The National Water Resources Council – 1965**

The Water Resources Planning Act of 1965 established a cabinet-level Water Resources Council to study, coordinate and review water and related land resources requirements, policies and plans, and authorized funding for states to plan and implement related programs.

The Act established the Water Resources Council, composed of the Secretaries of the Interior, Agriculture, Army, Commerce, Housing and Urban Development, Transportation, and Energy, and the Administrator of the Environmental Protection Agency. The Council was required to study continually and assess biennially the adequacy of water supplies in each water resource region in the U. S. and the national interest in these; study continually the relation of regional or river basin plans to the requirements of larger regions, and the adequacy of administrative and statutory means for coordinating federal water and related land resources policies and programs. The Council was also charged with assessing the adequacy of existing and proposed policies and programs to meet water requirements and make recommendations to the President.

In addition, the Act required the Council to establish principles, standards and procedures for federal participants in preparing comprehensive regional or river basin plans and for formulating and evaluating federal water and related land resources projects.

In theory it was a meritorious concept, in practice an abject failure. It was a bureaucratic nightmare, which imposed a overbearing Federal presence and meddling in local and regional water resources planning and decision-making. Mercifully, President Ronald Reagan put the Council out of its misery upon taking office in 1981

### **National Water Commission - 1968**

Public Law 90-515 signed on September 26, 1968 established the National Water Commission. The Commission was tasked with providing the President and Congress with water policy recommendations "for the efficient, equitable and environmentally responsible management of its water resources." The final report, Water Policies for the Future, was presented on June 14, 1973, almost five years after its establishment.

The Commission consisted of seven members and from 19 to 44 staff members. The Commission approved a program of background studies covering 22 fields of interest related to water policy. The final report included seventeen chapters focusing on various aspects of water resources policy and develop and

presented almost a hundred conclusions and recommendations.

For the most part it was a scholarly thought-provoking report. Where it attempted to address controversial aspects of water resources policy, such as; acreage limitation, cost sharing and water rights it was soundly criticized and discredited by many policy makers in Washington and elsewhere.

All of the aforementioned reports and studies advanced the public debate on water resources management and development and presented valuable recommendations. Unfortunately, few were ever read and over the years have served only to gather more dust.

That brings me to the most recent such report which is atypical of the previously mentioned commission studies in that it neither advanced the public debate nor presented valuable recommendations. In fact, it failed to comply with its Congressional mandate.

### **Western Water Policy Review Advisory Commission – 1992**

Pursuant to Title XXX of P.L. 102-575, Congress directed the President to undertake a comprehensive review of Federal activities in the nineteen Western States affecting the allocation and use of water resources, and to submit a report of findings to the President and Congress. From the very beginning it was an agenda-driven political beast. On his last day in office President George W. Bush appointed the Commission's members. Subsequent to its organizational meeting, President Clinton revoked the appointments of the Commission members and not until September 15, 1995 were the twenty-two members appointed and the Commission chartered by the Secretary of the Interior. It was then necessary for Congress to extend the Commission's final report due date to October 2, 1997.

In December 1997, the National Water Resources Association provided comments on the draft final report to the Commission. In the Association's opinion, the most significant single flaw in the draft report was its failure to follow the Congressional charge to the Commission. The Commission was directed to "[a] review problems affecting water resources development in the West; [b] assess current federal programs with an eye towards reorganization or consolidation; [c] consider the water-related problems of rural communities; [d] review the need for additional storage or other supply enhancement alternatives; [e] review the effectiveness of existing institutional arrangements in addressing water issues; [f] examine the existing legal regime, including those laws governing federal/state relations; and [g] review the activities, authorities and responsibilities of the various federal agencies."

Rather than follow this Congressional directive, the Commission apparently developed its own agenda. This agenda focused not upon successful water resources development, but rather ecosystem protection; not upon a critique of the effectiveness of existing federal agencies and programs, but rather the creation of yet a new bureaucratic "governance structure" with a basin commission at its head; not upon means to meet ever increasing consumptive water demands at the local level, but rather social and economic decision-making which may leave demands unfulfilled. In short, the Commission failed to produce a useful work product.

As far as recent water policy commissions are concerned, this is a brief summary of the good, the bad, and the ugly.

The search for a national water policy is akin to searching for the mythical El Dorado. Hydrologically we are not a homogeneous nation; therefore, it is unlikely that a comprehensive national policy is possible or desirable.

The Clean Water Act is arguably the most successful environmental statute ever enacted; yet, some of the “one size fits all” water quality regulations promulgated under the Act are nonsensical when applied to ephemeral streams and rivers in the arid West. In Alaska, the tiny town of Skagway is required to provide tertiary treatment of its sewerage even though the small volume is discharged into an 800 foot deep receiving body with an average 30-foot diurnal tidal fluctuation in the north Pacific Ocean. There are other examples too numerous to detail here.

### **H.R. 3561 – a bill to establish the Twenty-First Century Water Policy Commission**

The membership of the **National Water Resources Association cannot support H.R. 3561 as written** and it is unlikely that we would support the idea of yet another water policy commission in any form. We see little likelihood that the ultimate recommendations would add anything new to the body of knowledge on water resources management and development or national policy.

In the West, water infrastructure is every bit as important as transportation infrastructure. It is essential to the continued economic growth and development of the region. Water infrastructure needs continue to exist, particularly, rural water supply. However, on the whole, they are quite different from those of the past. No one envisions a future infrastructure development program and financing arrangements like the Reclamation program, which facilitated the development and unprecedented economic growth of the West during much of this century. Future projects are more likely to include non-structural features, environmental enhancement, proven best management practices, innovative approaches to water quality/quantity concerns and greater levels of non-federal financing.

A better use of the money that would be dedicated to the Commission called for in H.R. 3561 would be to conduct a comprehensive national water resources needs assessment.

An essential element, which is currently missing from the federal planning equation, is a basin-by-basin infrastructure and programmatic needs assessment. Such an assessment cannot be developed without the active involvement and, perhaps, leadership of the nation’s governors, water resources professionals, and state and local officials.

In addition, several federal agency projects have been authorized by the Congress but remain unfunded. These projects should be reviewed to determine if they still meet the needs they were authorized to address. These projects should be prioritized on a state and regional (watershed) basis and Congress should determine what project benefits are in the federal interest for funding purposes.

I thank the Chairman and the Committee for this opportunity to present NWRA’s thoughts and concerns regarding this legislation and we wish to continue to work with the Committee as they review and develop water policy for the nation.